

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of

Federal-State Joint Board on
Universal Service

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CC Docket No. 96-45

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

REPLY COMMENTS OF REED SMITH SHAW & McCLAY

The law firm of Reed Smith Shaw & McClay ("RSSM") hereby submits the following reply comments in responses to the Notice of Proposed Rulemaking ("NPRM")¹ in the above referenced docket concerning implementation of universal service directives in new Section 254 of the Communications Act, as amended.² RSSM reiterates its position set forth in its initial comments in this proceeding ("RSSM Comments") that Commercial Mobile Radio Service ("CMRS") providers are, by law, exempted from subjection to state universal service assessment standards and, in light of the language of section 254(d) of the Communications Act, as amended, should not be subjected to federal universal service assessment requirements, either.

¹ Federal-State Joint Board on Universal Service, Notice of Proposed Rulemaking and Order Establishing Joint Board, FCC 96-93, adopted and released March 8, 1996 and amended by Order released April 1, 1996, DA-96-483 (hereinafter "NPRM").

² 47 U.S.C. § 254.

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RSSM first notes that each of the commenting parties in this proceeding who analyzed the interplay of the language of the Telecommunications Act of 1996 (“the 1996 Act”) with the Omnibus Budget Reconciliation Act of 1993³ came to the same legal conclusion as RSSM did -- that the states lack statutory authority to regulate CMRS carriers, including for the provision of intrastate universal service requirements.⁴

A number of commenting parties argue that CMRS providers should be assessed for federal universal service contributions on the ground that new Section 254(d) of the Act covers “every telecommunications carrier that provides interstate telecommunications services.”⁵ This reading of the statute, however, is superficial and gives rise to a fallacious conclusion.

As made clear in RSSM’s initial comments,⁶ the mandate of Section 254(d) calls for universal service contributions to be assessed on an “equitable and non-discriminatory” basis. It would be both inequitable and discriminatory to assess wireless service providers in general for contributions to the federal universal service fund because the services which these entities provide do not at this time represent a replacement for land-line based plain old telephone

³ Pub. L. 103-66, Title VI, § 6002. Codified at 47 U.S. C. § 332(c).

⁴ Compare RSSM Comments, at 2-8, with Comments of Personal Communications Industry Association (“PCIA”), at 7-8; Cellular Telecommunications Industry Association (“CTIA”), at 3-4, 6-7; Airtouch Communications, Inc., at 3-5.

⁵ See, e.g., Comments of America’s Carriers Telecommunications Association, at 4, 12-13; Ameritech, at 23-24; Competitive Telecommunications Association, at 15; ICORE Companies, at 18-19; Illinois Commerce Commission, at 9; LDDS Worldcom, Inc., at 23; Pacific Telesis, at 8, 20-21; and United States Telephone Association (“USTA”), at 24.

⁶ RSSM Comments, at 10-12.

service.⁷ This is particularly true for messaging services, which today are not even two-way, interactive services akin to traditional plain old telephone service. Messaging services by themselves do not provide the form of essential, two-way voice communication requirements anticipated in Section 254 of the Act.⁸

For a similar reason, it is unlikely in the foreseeable future that most CMRS carriers, and messaging providers in particular, will qualify as “eligible” for universal service financial support within the definition of Section 214(e) of the Act.⁹ Thus, as recognized by numerous commenting parties, it would be inequitable to require this class of service providers to contribute to a fund upon which they are unlikely themselves to draw.¹⁰

In summary, RSSM submits that a careful and correct reading of Section 254 of the Communications Act militates against assessment of universal service obligations on most CMRS carriers. This critical statutory analysis is lacking in the comments of those parties which have argued in favor of including CMRS providers in general, and messaging operators in particular, among those telecommunications operators to be assessed.¹¹ As stated in Section

⁷ See, e.g., definitions of universal service standards in Comments of Ameritech, at 6-7; Bell Atlantic, at 7-8; Bellsouth Corp., at 5-6; and Sprint Corp., at 7-8.

⁸ 47 U.S.C. § 254(c)(1).

⁹ 47 U.S.C. § 214(e).

¹⁰ See Comments of CTIA, at 3; Comsat, at 12.

¹¹ In this connection, RSSM does not address the merits of PCIA’s argument that broadband CMRS could qualify for universal service funding. PCIA Comments, at 16. Messaging services do not meet the definition of broadband CMRS.

254(c)(1),¹² universal service is an “evolving” concept, and this position may be revisited by the Commission at a later date. At this time, the concept of universal service is such that it does not encompass the special nature of low-cost services offered by messaging operators.

In this regard, RSSM submits that the model of funding for Telephone Relay Service (“TRS”) which some commenting parties cite¹³ is inapposite to this discussion of Section 254 of the Communications Act. The funding mechanism adopted by the Commission for TRS is based on the language of the Americans With Disabilities Act (“ADA”)¹⁴ and not on the differing and specific standards of Section 254, which was carefully crafted after lengthy Congressional debate. It is noted in this connection that the Commission continues to view its regulatory responsibilities arising under the ADA and under Section 255 of the Communications Act¹⁵ as distinct, and has announced its intention to initiate a separate rulemaking proceeding to address these special statutory issues.

For the foregoing reasons, it is respectfully submitted that (1) CMRS carriers are exempt from universal service regulation by state authorities, and (2) it would be inequitable and

¹² 47 U.S.C. § 254(c)(1).

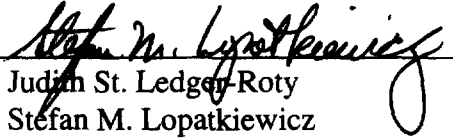
¹³ See Comments of US West, Inc., at 16-18; USTA, at 24.

¹⁴ See *Telecommunications Relay Service and the Americans With Disabilities Act of 1990, Third Report and Order*, 8 FCC Rcd 5300 (1993).

¹⁵ 47 U.S.C. § 255.

discriminatory at this time to subject CMRS carriers in general, and messaging providers specifically, to federal universal service contribution obligations.

Respectfully submitted,

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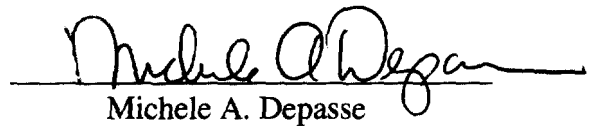
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